

TO: Personnel Board

FROM: Michael Lipski, Compensation and Benefits Manager

DATE: January 21, 2011

SUBJECT: EOC Investigator/Conciliator Series-Department of Civil Rights

The Department of Civil Rights has requested a study of the EOC Investigator/Conciliator series. This request has multiple parts. First, the request is to determine whether the EOC Investigator/Conciliator series is appropriately placed in CG18, Ranges 4, 6, and 8. Second, the request is to determine whether the current Investigators are appropriately placed within the series. Third, in discussions with Director Lucia Nuñez and Equal Opportunities Manager Ariel Ford, it has been determined that the series should be retitled to remove reference to the Equal Opportunities Commission. Finally, Ms. Nuñez has concluded that the Department would run more efficiently if the existing classification of EOC Outreach Coordinator is eliminated and the incumbent placed into the EOC Investigator/Conciliator series. Based on my review of the submitted materials, the updated class specification for the EOC Investigator/Conciliator series (see attached), interviews with Ms. Nuñez, Ms. Ford, and the incumbents, and evaluation against other positions/classifications in the City, I make the following recommendations:

- The EOC Investigator/Conciliator series should be retitled to EO Investigator/Conciliator 1-3 to reflect the fact that the incumbents are investigating violations of the City's Equal Opportunities ordinance.
- The EO Investigator/Conciliator series is appropriately placed in CG18, Ranges 4, 6, and 8 for the reasons outlined in this memo.
- Incumbent E. Kestin (position #893), currently an EO Investigator/Conciliator 2, should be reclassified to an EO Investigator/Conciliator 3, CG18, Range 8.
- The classification of EOC Outreach Coordinator (CG18-04) should be deleted.
- The current position of EOC Outreach Coordinator in the DCR budget should be recreated as an EO Investigator/Conciliator 2 (CG18-06). The position currently held by EO Investigator/Conciliator 1 M. Gombar (#884) is already budgeted as an EO Investigator/Conciliator 2. However, the incumbents, A. Weatherby-Flowers (#892) and M. Gombar, shall be placed as or remain as EO Investigator/Conciliator 1 until the Department determines that the individuals have met the minimum qualifications for an EO Investigator/Conciliator 2. By budgeting the positions at the 2 level, the Department can reclassify the individuals by personnel action at the time the Department determines the incumbents meet the minimum qualifications for that level.

The title of EOC Investigator/Conciliator dates back to before the merging of the Equal Opportunities Department and the Affirmative Action Department into one Department of Civil Rights (DCR). At that time, the Equal Opportunities Commission (EOC) had an oversight role regarding investigations, so the investigators were titled EOC Investigators, to refer to the Commission. However, since the merger, the investigation function is part of DCR, so it is more appropriate to refer to the Equal Opportunities ordinance that the investigators investigate, rather

than continue a reference to the Commission. Based on this, it is appropriate to retitile the series EO Investigator/Conciliator.

The EO Investigator/Conciliators (“Investigator” for short in this memo) provide an important function within the Department of Civil Rights. Their role is “...performing intake activities, providing outreach and educational services as assigned, investigating formal charges of discrimination, preparing decisions on cases, and providing mediation/conciliation services...” The investigations generally involve complaints from members of the public who allege discrimination under the City’s Equal Opportunity ordinance. The complaint can be against a business, landlord, or other entity. Once a complaint is filed, the Investigator is responsible for sending a detailed written questionnaire to the charged party to solicit information. The Investigator may have to follow up on information. Once the Investigator has all the information s/he can get, the investigator makes a recommendation as to whether there is probable cause to refer the claim to the EOC Hearing Examiner, also an employee of DCR. In addition to investigating the complaint, the Investigator may perform conciliation with the parties to reach a resolution short of a formal hearing. Some investigations are conducted on behalf of the Federal Equal Employment Opportunities Commission (EEOC) or the State Equal Rights Division (ERD). Besides investigations, the Investigator is responsible for developing and conducting training for City employees or the general public upon request on subjects that affect the Equal Opportunities ordinance and issues of non-discrimination.

The EO Investigator/Conciliator series starts with the entry level in range 4 of CG 18. It is intended that after a period of time and demonstrated proficiency in conducting investigations, conciliations, training, and the full range of duties and responsibilities of the classification, an incumbent would be moved to an Investigator 2, in range 6. The Investigator 3 level is reserved for a team leader who would serve as mentor to lower-level investigators. In addition, the Investigator 3 may be called upon to perform higher-level research and keep abreast of changes in EO law on a nationwide basis. As a team lead position, it is not intended that every investigator would attain this level as then there would be no team to lead. This position, rather, will depend on the needs of the Department as well as the skills and abilities of individual investigators. It is possible there will be times when the Department does not have an Investigator 3 if no one meets the minimum requirements or possesses the requisite skill set.

Regarding appropriate placement within CG18, I find that the current placement of the Investigators in ranges 4, 6, and 8 is appropriate. It is difficult at times to quantify differences among professional positions, but the Personnel Rules, approved and adopted by the Personnel Board, provide guidance. Criteria reviewed include specialized knowledge, budgetary authority, programmatic authority, required level of education, and decisional impact. These comparisons provide a framework for comparison among other positions in the City’s system and are not meant to degrade the work of one position as compared to another, or to discount the importance of the work that each position in the City performs.

In looking at Compensation Group 18, most of the City’s professional series that have a 1, 2, and 3 level are located in Ranges 6, 8, and 10, with a 4 in Range 12 where appropriate. Not all series go to a 4, or even a 3. The professional series include classifications such as Accountant, Engineer, Human Resources Analyst, Management Information Specialist (IT), and Planner.

These professional classifications all have a specific field of study associated with them and the entry level requires a 4 year degree. The intent is that incumbents will use their specialized education immediately upon entering the workforce and gain professional experience in order to advance to the 2 level. Regarding the EO Investigator/Conciliator series, while a 4 year degree is the entry-level requirement, there is not a specialized field of study that would lend one to becoming an EO Investigator/Conciliator. The degree requirement discusses Business Administration or Political Science because those fields are more likely to expose someone to civil rights legislation. However, the Department will still have to train someone on the various Equal Opportunity laws and ordinances, and on investigative and conciliation processes. Because the position is not expected to have the same degree of specialized knowledge upon starting as the other professional series referenced above, it is appropriate for the entry pay range to be lower. Range 4 is an appropriate starting range, because once an incumbent has reached the full-performance Investigator 2 level, the employee is expected to perform independently using the specialized knowledge acquired as a function of being in the position for a period of time. This is equivalent to how a new hire in the other professional series, also in Range 6, is expected to perform when walking in the door.

Regarding the Investigator 3 position, it is appropriately placed in Range 8. Generally in the professional series described above, there is a 2 range interval between levels. With the Investigator 1 being a range 4, and the Investigator 2 being a range 6, the Investigator 3 would naturally fall in range 8, and historically, this is the range for the Investigator 3. The incumbent in the Investigator 2 position raised some positions in Range 10 as possible comparables, such as the Affirmative Action Specialist, the Transportation Operations Analyst, the Child Care Program Coordinator, and the Community Services Program Coordinator. However, after reviewing the class specifications for these positions, I find that these positions have higher programmatic and/or budgetary authority and decisional impact than the Investigator 3 position. Each position will be discussed briefly below:

- Affirmative Action Specialist—This position is responsible for conducting regular training on the City's 3-5 Prohibited Harassment and Discrimination policy for all City employees. While investigator/conciliators also conduct training, it is not mandatory training and it is usually for much smaller audiences than the over 2,700 employee workforce at the City. In addition, the AA Specialist is responsible for conducting face-to-face investigations regarding harassment and discrimination complaints and making initial determinations regarding witness credibility. The AA Specialist drafts an investigative report with recommendations that are provided to the Appointing Authority, who uses the report to determine how to proceed. The outcome of such an investigation may have a direct impact on an employee's position with the City, resulting in discipline or possibly termination.

The Investigators conduct paper investigations, sending questionnaires and receiving responses. While the Investigators may do telephonic follow-up, this is not the same as conducting face-to-face interviews of multiple witnesses for an individual case. Also, the outcome of an EO investigation only results in referral to a hearing before a Hearing Examiner. The Hearing Examiner then has the responsibility to deal with matters of credibility and to determine an appropriate remedy. The Hearing Examiner does not rely

on the results of the Investigator's investigation but rather on the information gleaned during the hearing. The required skills and responsibility of the AA Specialist position are higher than necessary for the Investigator series. In addition, the decisional impact of the AA Specialist is greater than in the Investigator series.

- Transportation Operations Analyst—This position is responsible for developing the Operating and Capital Improvement budgets for Traffic Engineering and the Parking Utility. The position performs budgetary planning and cost-benefit analysis, and prepares related reports. The position provides “day-to-day control over a large variety of expenditures and revenues.” Besides budgetary items, the position has other administrative responsibility. This high degree of budgetary authority and broader focus is not found in the Investigator series and warrants a higher range. An error in the budget could have significant ramifications for the overall operations of the department.
- Child Care and Community Services Program Coordinators—These positions are found in the Community Development Division. Both positions have budgetary authority and/or monitor funding to external sources. The Child Care position coordinates accreditation processes throughout the City for child care facilities, which has a significant impact on the facility's ability to operate. The Community Services position coordinates the City's purchase of services program, and oversees the development of contracts with non-profit agencies and other service providers. Again, these duties carry a high degree of responsibility.

Other positions in Range 10 could be distinguished similarly, but are too numerous to detail in this memo.

Finally, the State of Wisconsin has an Equal Rights Officer (ERO) classification series (see attached) with similar duties and responsibilities to the EO Investigator/Conciliator. These positions investigate various alleged violations of Wisconsin statutes, including Fair Employment, Open Housing, FMLA, Minimum Wage, overtime, Prevailing Wage, and others. A position at the Civil Rights Program at the State has responsibility for

Compilation and assessment of information obtained during the initial intake process, including the rejection of unfounded complaints, and provision of consultation and education to all involved parties regarding provisions of the relevant laws and the regulatory and enforcement procedures and processes employed by the agency.

Analysis and investigation of civil rights complaints to determine whether violations of law have occurred and whether probable cause for discrimination exists, and formulation and presentation of written decisions regarding findings of investigation.

Continuing attempts at settlement of complaints, mediation between complainants and employers, consultations with parties and their attorneys with the intent of settlement of disputed issues and the resolution of the complaint, execution of settlement agreements prior to or subsequent to full investigations, and referral of unsettled complaints for hearing.

Presentations to various groups regarding laws enforced by the agency.

Other positions in the classification series have similar duties, and these duties are very similar to those found in the EO Investigator/Conciliator series. The series is also structured in a similar fashion in that the expectation is that an employee would move from an ERO-Entry to an ERO-

Journey as a function of training and experience. The ERO-Senior is a reserved position, dealing with the most complex investigations, performing special assignments, and acting in a lead capacity. The full-performance wage of the ERO-Entry is \$45,676, the ERO-Journey is \$53,393.60, and for the ERO-Advanced, \$62,441.60. This compares favorably to the EO Investigator/Conciliator 1 Step 5 rate of \$52,309, the EO Investigator/Conciliator 2 Step 5 rate of \$56,781, and the EO Investigator/Conciliator 3 Step 5 rate of \$62,073. The State also pays its entry professional positions, such as Human Resources Specialist and Accountant at a higher level than the entry Equal Rights Officer, so the City's placement is not inconsistent with other organizations. Based on the City internal comparables and the State of Wisconsin classification series, I conclude that the EO Investigator/Conciliator series is appropriately placed in the City's Classification and Compensation Plans in CG18, Ranges 4, 6, and 8.

Incumbent EO Investigator/Conciliator 2 E. Kestin has been serving in a lead capacity for some time. He has been employed by DCR since 2003, and has been an EO Investigator/Conciliator 2 since 2007. Since that time, he has served as a mentor to both new employees, including EO Investigator/Conciliator 1 M. Gombar, as well as various interns. He also performs his work with a high level of skill and minimal review. He independently performs research and monitors EO trends nationwide to ensure Madison's EO Ordinance remains current. The Department recommends, and I concur, that Mr. Kestin is performing the work of an EO Investigator/Conciliator 3. The Department has indicated an ongoing need for a leadworker in this area as the EOC Education and Outreach Coordinator position is to be recreated as an EO Investigator/Conciliator. Therefore, I recommend recreation of his position as an EO Investigator/Conciliator 3 and that he be reallocated to the new position.

As stated, the EO Investigator/Conciliators, in addition to investigations, also conduct training on areas related to Equal Opportunities. In addition, the Department has a classification of EOC Outreach Coordinator with one incumbent, who in addition to developing training and marketing materials relative to Equal Opportunities, has filled in and conducted investigations during times when case intake has been high. In reviewing this situation, the Department has concluded that it could operate more efficiently with all three employees in the EO Investigator/Conciliator series. This way, investigations and training burdens could be spread out among all employees, and the EOC Outreach Coordinator, currently in CG18, Range 4, would have advancement opportunities through placement in the EO Investigator/Conciliator series. Based on this, I recommend deletion of the EOC Outreach Coordinator classification, recreation of the existing position (#892) as an EO Investigator/Conciliator 2, and reallocation of the incumbent to the new position, but to underfill as an EO Investigator/Conciliator 1.

Regarding the EO Investigator/Conciliator 1s, the updated class specification outlines criteria for advancement to the EO Investigator/Conciliator 2 level. Following the actions in the attached resolution, both positions will be budgeted at the EO Investigator/Conciliator 2 level. The department will then have the ability to move the incumbents to the EO Investigator/Conciliator 2 level when it determines that the incumbents have met the minimum criteria. This action will be accomplished by personnel action, similar to how other departments move incumbents from a 1 to a 2 where progression is anticipated as a function of increased skill and independence of action.

We have prepared the necessary Resolution to implement this recommendation.

Editor's Note:

Compensation Group/Range	2011 Annual Minimum (Step 1)	2011 Annual Maximum (Step 5)	2011 Annual Maximum +12% longevity
18/04	45,360	52,309	58,578
18/06	48,225	56,781	63,596
18/08	52,309	62,073	69,524

cc: Lucia Nuñez-Director of Civil Rights
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